

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland  
October 21, 1993

In the Matter of  
George Williams, Owner of  
5301 Westbard Circle, Unit 205  
Bethesda, MD 20816  
Complainant

**Vs.**

Frances Kaplan, President  
Board of Directors  
Kenwood Place Condominium  
Respondent

Case No. 175-0

### Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9 (a), 10B-10, 10B-11 (e), 10B-12 and 10B-13 of the Montgomery County Code, 1984, as amended, of record, it is therefore, this 21st day of October, 1993, found, determined and ordered as follows:

## BACKGROUND

On May 27, 1992, George Williams, (hereinafter the "Complainant") owner of 5301 Westbard Circle, Unit 205, Bethesda, Maryland, 20816 filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that the Kenwood Place Condominium Board of Directors (hereinafter the "Respondent"), failed to provide proper notice of certain closed meetings of the Board of Directors and failed to give the Complainant access to the minutes of those meetings.

The Complainant alleged, in particular, that the Board of Directors violated the requirements of Section 11-109.1 of the Real Property Article requiring that certain statements, records, and authority by which a meeting was closed be included in the subsequent meeting minutes of the Board of Directors. In addition, the Complainant alleged that the Board of Directors violated the requirements of Real Property Article Section 11-116(c) by failing to give him access to minutes of certain closed meetings held pursuant to Section 11-109.1.

The Complainant sought an Order requiring the Respondent Board of Directors to show him the minutes of all the closed meetings and to require the Board to give notices of their closed meetings as required by State Law.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On September 22, 1993, the Commission conducted a public hearing in this case.

#### FINDINGS OF FACT

Based on the stipulations of the parties and the testimony and evidence of record, the Commission makes the following findings:

1. A closed meeting of the Board of Directors was held on August 19, 1991. In addition, other closed meetings of the Board of Directors have been held from time to time over the years.
2. No advance notice was given of the August 19, 1991 meeting to the Council of Unit Owners. In addition, the Respondent acknowledged that there was a failure to provide the statutorily required language in the minutes of the next meeting of the Board of Directors, which was held after that meeting of August 19, 1991.
3. The Complainant has requested copies of the Minutes of the August 19, 1991 meeting and of all closed meetings held by the Board of Directors of the Respondent in "executive session" and the Respondent has refused to provide access to the Complainant to those minutes.

#### CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including, but not limited to, testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. The Respondent held a meeting on August 19, 1991, that was a closed session as defined by Section 11-109.1 of the Real Property Article. The Respondent violated the requirements in Section 11-109.1(b)(2) that requires "(a) statement of the time, place, and purpose of any closed meeting, the record of the vote of each board member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next meeting of the Board of Directors."
2. The Respondent had an obligation to provide the information required under Section 11-109.1(b)(2) to all members of the council of unit owners in the minutes of the next meeting, and failed to do so.
3. With regard to the request to provide access to the minutes of the closed meeting, the Commission finds that Section 11-116(c) of the Real Property Article provides that: "Every record, including insurance policies, kept by the council of unit owners shall be maintained in Maryland or within 50 miles of its borders and shall

be available at some place designated by the Council of Unit Owners within the county where the condominium is located for examination and copying by any unit owner, his mortgagee, and their duly authorized agents or attorneys, during normal business hours, and after reasonable notice."

4. Section 11-116 (c) provides for record review without the specific limitations found in the later enacted provisions of Section 11-109.1, related to closed meetings of the Board of Directors. In particular, Section 11-109.1(a) provides that such meetings may be held in closed session only for certain enumerated purposes, namely:

- (1) Discussion of matters pertaining to employees and personnel;
- (2) Protection of the privacy or reputation of individuals in matters not related to the council of unit owners' business;
- (3) Consultation with legal counsel;
- (4) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;
- (5) Investigative proceedings concerning possible or actual criminal misconduct;
- (6) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or
- (7) On an individually recorded affirmative vote of two-thirds of the Board Members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

5. The statutory revisions related to the permissibility of closed meetings of the Board of Directors pursuant to 11-109.1 were enacted and added to the Maryland Condominium Act in 1983, after the time that Section 11-116 was already part of the law.

6. Section 11-109.1 does not specifically address the issue of access to the records of the closed meetings of the Board of Directors which are allowed pursuant to the limited terms of that section. Nevertheless, the Commission finds that by detailing the specific nature of the very limited scope of issues that may be dealt with in closed meetings of the Board of Directors, the Legislature intended that minutes of those meetings dealing with those topics, under those circumstances that are in harmony with the scope of the that section, may also be kept confidential.

7. Where there is an apparent conflict between two statutes, they must be interpreted with one another. Farmers & Merchants Bank v. B. Schlossberg, 306 Md. 48, 507 A.2d 172 (1986). Furthermore, a specific statute is deemed to control over a general statute encompassing the same subject matter. A.S. Abell Publishing Co. v. Mezzanotte, 297 Md. 26, 464 A.2d 1068 (1983); Montgomery County v. Lindsay, 50 Md. App. 675, 440 A.2d 411 (1982). Statutory language needs to be construed in a reasonable manner with reference to its main purpose, aim or policy. In re: Keith G., 325 Md. 538, 601 A2d 1107 (1992).<sup>1</sup>

8. It would be unreasonable to conclude that the Legislature intended that no written record be kept of the meetings held in closed session pursuant to Section 11-109.1. On the other hand, it would completely defeat the purpose of closing such a meeting by allowing full and complete access to any member of the Council of Unit Owners to those written records in many circumstances. For example, where such issues as the protection or privacy of individuals are at stake or where, for example, strategy sessions may be held with counsel to plan litigation that might be against a member of the Council of Unit Owners, it would be absurd to assume that records of those sessions must be released to every member of the Council of Unit Owners. As such, the Commission finds that, by enacting Section 11-109.1, the Legislature also intended that records of those closed sessions, beyond that encompassed within the requirements of Section 11-109.1, could also be "closed" and unavailable to the membership of the Council of Unit Owners.

9. The Commission finds that, absent law to the contrary, all books and records and minutes of any Council of Unit Owners meetings should be made available for examination and review by any member of the Council of Unit Owners. In fact, the Commission finds that there are probably numerous instances where it may be appropriate to hold meetings in closed session but where the minutes of those closed sessions might rightfully be made available for review by all members of the Council of Unit Owners.<sup>2</sup> However, in enacting Section 11-109.1, the legislature recognized that there are certain legitimate reasons for which a Board of Directors of a Condominium Association might

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<sup>1</sup>In the recent case of Loyola Federal v. Francois, 626 A.2d 52 (1993), the Court of Appeals dealt with an apparent conflict in the requirements of disclosure of two different code sections related to retail installments sales. The Court found that certain disclosure requirements of one code section which related to retail installments sales were superseded by a separate code section available to a lender via election under the so-called "credit grantor closed and credit provisions."

<sup>2</sup>In fact, it is possible that only a small portion of the minutes of such meetings need to be "closed" and kept confidential while the remainder of the minutes ought to be made available.

need to hold certain meetings in closed session and, therefore, also keep the minutes of those meetings confidential.

10. Notwithstanding the ability of the Board of Directors to hold a closed meeting of the Board of Directors and then to later refuse to share the minutes of the meetings with members of the Council of Unit Owners, the Commission finds that the provisions of Section 11-109.1 must be strictly complied with. It is imperative that sufficient information be provided to the members of the Council of Unit Owners to apprise them of, in at least general terms, the time, place, and purpose of any closed meetings along with a record of a vote of each Board Member by which any meeting was closed and a specification in detail related to the authority under Section 11-109.1 which allowed for the closing of that particular meeting.

11. We would prefer to err on the side of providing more disclosure than less. The possibilities for abuse are numerous and it may be easy for renegade Boards of Directors to hide behind the provisions of Section 11-109.1 and keep the membership uninformed about matters that legitimately should be brought to their attention. As such, the Commission does not come to this finding lightly but finds that certain deliberations are of such a sensitive nature that the disclosure of the minutes of those deliberations would completely negate the desired legislative intent in creating Section 11-109.1. Boards of Directors are made up of many elected individuals and it would require that every member of the Board violate his or her fiduciary duty if they were to fail to properly comply with the scope of section 11-109.1. As such, the Commission comes to this decision by balancing the competing interests of full disclosure with those of confidentiality, in the strictly designated circumstances as detailed by the legislature in the statute.

#### ORDER


In view of the foregoing, and based on the evidence of record, the Commission orders that:

1. The Respondent must review all minutes of any closed meetings held in the past three years pursuant to Section 11-109.1 and determine whether or not it has fully complied with Section 11-109(b). To the extent the Respondent has failed to provide all required disclosures under Section 11-109.1(b), the Respondent is ordered to cure any such defects within the next sixty days.

2. The Respondent is required to release the minutes of any meeting of the Board of Directors held in closed session unless those minutes deal specifically and solely with the "[p]ermitted and certain enumerated purposes" detailed in Section 11-109.1.

3. The Respondent is to strictly comply with Section 11-109.1 in the future.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.

  
Jonathan Bromberg, Panel Chair  
Commission on Common Ownership  
Communities

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